App. F. IX-4

Previous References
No 163-33 (1-3)

193 (Legis)

File No. 33-36

Serial Nos. 1

Letter References.
LR 9-37 — 20, 24

PRESERVED

GENERAL AND REVENUE SECRETARIAT.

Manuscript & Proceedings

Serial Nos. one

~~Part B~~ for February 1937

SUBJECT.

Regulations further to amend the Mysore Agriculturists Relief Regulation — Regn. II of 1937

Note Nop 4906 99-2-37 Home Compiler

WD 0418—GPB—22,500—29-8-36

Notification as above

M Gyng
31/3/37

Report on the working of

General and Revenue Secretariat | C6 File No. 102 of 1935. | [App. F. III—2

Serial No.

No 150 dt 14/11 from the Resident forwarding a report on the working of the Agriculturists Relief Regn.

1) When the Agriculturists Relief Act was extended throughout the State, in June, 1934, the High Court was asked to send a report on the working of the Regn at the end of a year. The report has just now been received

2) From the report it is seen that during the year 1934 (probably calendar year) the benefit of the Regn was claimed in 5338 cases & the claim was allowed in 2282 cases. It is stated that in a large number of cases reasonable opportunities were made. and that the exclusion of the Ryots has been the cause of the fall in the no. of suits instituted.

NOTE—Contn Sheet.

WD 03594—GPB—30,000—13-7-35

This is perhaps due to the apprehension that a decree against one claiming protection under this Regn. may not be effectively executed. But these disadvantages are proposed to be removed by the amendments ~~contd~~ before the Legislature Council Sufficient safeguards are provided therein for the regular payment of the instalments to the decree holder and fear that his decree amount may not be recovered.

3) It is sought to reduce the no. of vexatious applications in High Court Suggested that this Regn. may be amended so that the claim under this Regn. may be raised at the earliest opportunity

Explanation (c) to S. 2 of

Report on the working of the Agriculturists' Relief Regulation 3

Serial No.

the Rajas seems to unfortunately that the question of Estates could be raised at stage. If High Courts proposal is to be adopted S. 2 (e) will have to be amended.

4) 2.... other amendment proposed is that Small Cause courts should be empowered to decide the preliminary issue of Estates raised in Small Cause suits. This would a large number of S. C. suits being tried as original suits. For under S. 23 every suit would have to be tried as an original suit. Also a proviso will have to be added to S. 23 to give effect to this High Courts proposal.

5) Subject for orders

SG
19/5/41

WD 03504—GPB—30,000—13-7-35

(5) The High Court have reviewed the working of the Agriculturists Relief Regulation in the State in 1934.

(7) The benefit of the Regulation was claimed in 5338 cases and allowed in 2282 Cases.

(8) The applications rejected on family larger (646) observing that the claim was frivolous. As this was the first year in which the Regulation was applied throughout the State, litigants & lawyers would have been somewhat doubtful as regards the interpretation & application of the law. In many doubtful Cases also, the claim may have been put up. As decisions of Courts grow up such cases will decrease.

(9) It is stated that the extension of the Regulation to the whole State has brought about a fall in the institutions. To that extent the debtors are saved from the harassment of creditors in the present at a time of depression etc. This does not mean that the creditors will not file suits at all. They are only holding back as under the present conditions, they are not likely to get much benefit by going to Court. A stage will come when they will have to file suits against debtors from whom they could not recover

Serial No.

et of Court as otherwise their claims would be barred. Further the amending Bill now before the legislature will improve the position of the creditors to some extent if they resort to the Courts.

10) The High Court suggest two amendments in the law —

(1) If the defendant claims to be an agriculturist in a Small Cause Suit, the doubt arises whether the Small Cause Court should decide the question of status or if the suit has to be transferred immediately to the original side Court and the question of status kept to that Court. The opinion of the High Court is that the Small Cause Court is the proper Court to decide this issue. Ordinarily where a preliminary issue is raised, the Court in which the suit is filed has to decide it. Under Sec 23, every suit under this Regulation has to be tried as an original Suit. This Regulation applies to a suit only if the defendant is an agriculturist & not otherwise (Sec 3). Consequently till it is decided that he is an agriculturist, it need not be treated as an original Suit & the Small Cause Court has to decide the preliminary issue. If the High Court expresses its view in a case coming before them, the decision will be acted upon by the Courts. No amendment of the Regulation appears to be necessary on this

NOTE—Contn. Sheet.

Cyn Relief Regn 2980 D
working of

File No. 102 of 1935. General and Revenue Secretariat

is only a question of interpretation.

(2) It is suggested that it should be provided that in respect of future dispute claim as agriculturists should be raised at the first hearing. Such a provision is very necessary & useful.

This has already been done & there is nothing more to do about it.

SPR

11) An amending Bill can be brought up early in next June before the L.A.

Chief Secretary) Ce 20-11-35

~~Will be kept on amending bill before the L.C. for consideration whether this & must still be passed through all stages at the next meeting, or if unanimously is received at the Session.~~

Hon 21/11/35

CHIEF SECRETARY 20 NOV. 1935

I Minister) Dewan)

I agree

SPR

10/12

OFFICE OF THE FINANCIAL SECRETARY 22 NOV. 1935 No. 3545

10) Nil

10-12-35

Hon 11/12

DEWAN'S OFFICE 10 DEC. 1936 No. 3801

14) Subs. unite in draft. Ce 11/12

Bills unite & amendments of Objects & Reasons.

It is perhaps advisable to make it Express.

Agriculturists' Relief. Vellore Amendment—

General and Revenue Secretariat | File No. | of 193 | [App. F. III—2

Serial No.

Reference is made in S. 4 of the Regn to the cessation of the Lease of the States. It is therefore proposed to insert the new clause in S. 4 (14)

In regard to pending suits the former provision will not be affected.

Submitted for orders.

Draft section for inserting proviso Rule 8 of O. 8 R

See 9/1 put.

See 4/1/36

15/Dft'd draft S. 4 (d)

See 10/1/36.

(12) Reference Para 10 above. The High Court suggested two amendments in the Rules Regarding the first point the High Court have merely expressed their views in a case before them & so no amendment is necessary.

(17) A draft Bill is put up to give effect to the second suggestion, namely that in suits for ejectment, the plea of a party having an agricultural tenancy should be raised at the earliest possible opportunity

Chief Secretary)

4916 15/1/36.

CHIEF SECRETARY. 11 JAN. 1936

Council matter

NOTE—Contn. Sheet

DEWAN'S OFFICE 16 JAN. 1936 No. 4465

(Dewan)

Can (14) If approved this will be circulated

Ce 11/1/36

Ce 11/1/36

Ce 11/1/36

15/1/36

03594—GPB—30,000—13-7-35

For Disposal by Circulation.

No. C. 173

7 1935-36.

GENERAL AND REVENUE SECRETARIAT.

Council Matter.

Subject

Bill further to amend the Mysore Agriculturists' Relief Regulation.

Circulated to the Members of Council.

By Order,

17th January 1936

Chief Secretary to Government.

5093/17.1.36 First Member of Council. 18/1

26/1

5292/20/1 Second Member of Council. 25/1/36.

S. N. put up.

For Favour of Final Note.

5200/24/1. First Member)

22-1-36

DEWAN'S OFFICE
25 JAN. 1936
No. 461 DEWAN)

25-1-36

Final Note signed by the Member is put up.

24/1.

Final Note by the First Member of Council. 9

Subject.—

Bill further to amend the Mysore Agriculturists' Relief Regulation.

1) The High Court of Mysore was requested in 1934 to submit a special report to Government on the working of the Agriculturists' Relief Regulation in the State in 1934, as the provisions of the Regulation had just then been extended throughout the State. In forwarding this report, the High Court has pointed out that in a surprisingly large number of cases, the claim for the benefit of the Regulation has been rejected, thus indicating that many unscrupulous defendants put in vexatious applications either to protract suits against them or in the hope of getting the benefit of provisions not intended for them. The High Court has accordingly recommended the amendment of the Regulation so that in all future suits (instituted after a date to be fixed), any defendant, who wishes to claim the benefit of the Regulation, must do so at the first hearing.

2) It is now proposed to introduce a bill on the lines suggested by the High Court. The Dewan and the Second Member of Council have agreed to this proposal, and gracious sanction of His Highness is now solicited to take necessary action in the matter.

Gopalaswami

MEMBER OF COUNCIL.

Bangalore,
24th January 1936.

Bill for ... to amend the Mysore Agriculturists' Relief Regulation.

the High Court of Mysore was requested in 1934 to submit a special report to Government on the working of the Agriculturists' Relief Regulation in the State in 1934, as the provisions of the Regulation had just then been extended throughout the State. In forwarding this report, the High Court has pointed out that in a surprisingly large number of cases, the claim for the benefit of the Regulation has been rejected, thus indicating that many unscrupulous defendants put in vexatious applications either to protract suits against them or in the hope of getting the benefit of provisions not intended for them. The High Court has accordingly recommended the amendment of the Regulation so that in all future suits (instituted after a date to be fixed), any defendant, who wishes to claim the benefit of the Regulation, must do so at the first hearing.

It is now proposed to introduce a bill on the lines suggested by the High Court. The Dewan and the Second Member of Council have agreed to this proposal, and practical sanction of His Highness is now solicited to take necessary action in the matter.

MINUTE OF COUNCIL.

24th January 1939.

Bangalore,

Submitted to His Highness.

I submit herewith a Final Note by the First *Member of Council* re: Bill further to amend the Mysore Agriculturists' Relief Regulation,

for His Highness' gracious approval.

Mirza M. Ismail
Dewan.
26-1-36

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Bill further to amend the Mysore Agriculturists' Relief Regulation.

So ordered
MD
30-1-36

391

Order.

24/
~~KRM~~
27/1/36

Approved
30-1-36

General and Revenue
Secretariat

C. 173

SUBJECT:- Bill further to amend the Mysore Agriculturists' Relief Regulation

(*)

31. All urgent or confidential files returned with His Highness' orders may in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Head-quarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Members of Council for perusal of His Highness' orders before/after issue of orders. (*Vide Rules* 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

Chief Secretary to Government.

Through the Secretary to Government,

..... Department.

FIRST MEMBER OF COUNCIL.

SECOND MEMBER OF COUNCIL.

Proth Branch.

NOTE.—Contn. sheet.

Serial No.

26) Subd. with a draft statement of General principles. After approval copies may be sent to R. A offices for being placed before them. The R. A to frame

27) Draft typed 4/1/36

Typing Section) SG 1/2/36

28) Typed draft Subd SG 3/2

29) Copies sent to R.A.

Typing Section for making 4 extra copies of the SG 4/2

6 30/2

30) To R. A offices with typed copies of the statement of general principles of the Rule SG 5/2/36.

1936 SEP

31) 3 Copies taken & file returned to the Hon. Prof. Gravely 6.2.36.

Cl. Sec (Mr.) 1-6-36

32) The statement of general principles has been circulated to the agenda for the R. A Secretaries

Subd for orders of Hon

NOTE.—Contn. Sheet.

WD 03591—GPB—30,000—18-7-35

File No 3161/P of 193 | General and Revenue Secretariat

Info. to be published under Rule 8 of L.C. Rules & Orders for being introduced in the June Session of L.C.

The last Gazette day for such publication is 28th inst.

Submd. for orders.

26/5

33) This will be published under Rule 8 of being placed before The L.C. (& Members) Dewan)

26/5

21/5.

OFFICE OF THE HON'BLE MINISTER 21 MAY 1936 B 6636

DEWAN'S OFFICE 22 MAY 1936 No. 793

22-5-36

34) Published

Three copies taken & file put. a.c)

26/5/36

Proof Rec'd 26/5/36

Typing sanction for 3 copies of the Draft Bill of Objects & Reasons.

26/5

TYPING SECTION 25 MAY 1936 GENL & REV. SECTT.

23) Two copies of the Draft Bill of Objects & Reasons are forwarded herewith. It may be sent to the Director for publication in the Gazette.

26/5

L.C. Office

37) The general principles of the Bill were accepted by the R. A by a majority.

The Bill is already published.

Could for orders that the Bill may be introduced in the coming L.C session.

It is perhaps necessary to refer the Bill to a Select Committee.

See 4/6/86. 38) Draft sections might perhaps

Ca 4/6/-

39) The following motions are suggested:—

(a) motion that the Bill published under rule 8 of the Rules of business be read in Council

(b) motion that the Bill need not be referred to a select committee

See 5/6 (c) motion That the rules of business & Standing orders be suspended and that the bill be passed

40) This is a small amendment & it does not appear necessary to refer it to the S.C. If the L.C passes for before

NOTE—Contn. Sheet.

714/936

B161

Agriculturists Relief (Amendment) Bill

File No. of 193 .

General and Revenue Secretariat

The motion may be amended subsequently

(Chief Secretary)

(1st Member)

6/6

5 JUNE 1936

6/6

OFFICE OF THE FIRST MEMBER (BOARD)
6 JUNE 1936

6/6

OFFICE OF THE FIRST MEMBER (OF COUNCIL)
30 JULY 1936

2nd Reading

6/6

40) The Bill was referred to the Select Committee. ~~read~~ & Called above.

Send for orders as to the date of the meeting

6/7

1st) A date may be fixed for the 1st. meeting

(1st Member)

6/30/7

Members of the S.C. as regards powers of reporting :—

1st Member

Mrs. D. Wadiah

Mr. V. Navaratnam

Mr. D. Ch. Chandrasekharan

Mr. A. R. Manickavasagam

Mr. V. Kanagaratnam

Mr. T. Kumaraswamy

6/30/7

Agri. Relief Bill 167/17

Serial No.

43) If approved 27th Aug (Thursday) at 3 P.M may be fixed (1st Member)

C
18/8/36

P.L.
17/8

44) Draft notice
C
18/8

45) Draft notice sent
SK
19/8

46) Draft C 19/8
issued P 1344—9 of 21 C

47) Sent. for orders if the S.C. report may be published. Mr. Sadasiva Iyer has not yet sent his note.

SK
12/9/36.

48) yes. It may be noted (Asst. Secy) with an asterisk against Mr. Natesan's name that the note has not been sent by him
C
12/9/36

49) Sent. for orders if the note of Mr. D.V. Chandrasekharaiah may also be published.

NOTE.—Contn. Sheet.

WD 03594—GPB—30,000—18-7-35

1774/1419 SK 14/9. 50) The note of Mr. Chandrasekharaiah submitted for perusal. It will be published along with the S.C. report (1st Member) Published 15/9 C 15/9

Typing Section for typing 2 copies of the S.C. report with list of members of the Committee. SK

TYPING SECTION
20 AUG. 1936
GENL & REV. SECTT.

TYPING SECTION
SEP. 1936
GENL & REV. SECTT.

7/4/36

167/

File No. of 193 General and Revenue Secretariat

5/12 Typing section for typing 3 copies of the report & the note of Mr. D. N. Chandrasekharan.

Sd
16/9/36.

Typed

20/9 D.R. Section with 5 typed copies of the report & the note

Sd
17/9.

Three copies of the Report have been taken for publication.

Prot. Br. w.c)

Sd
22/9/36

TYPING SECTION
16. SEP. 1936
GENL & REV. SECTT.

D.R.

Sd
22/9

350/36

883.

Bill further to amend the Mysore Agriculturists Relief Regulation.

--oOo--

Amendment.

The following explanation be added to Sub-section I.A.

"The earliest possible opportunity" in the above Sub-section shall (1) in suits in which a party is personally served with summons or notice and he does not appear in the case in pursuance thereof, be taken to mean any time within a period of 30 days from the date of Decree and (2) in suits in which a party is not personally served with summons or notice and he does not appear in the case in pursuance thereof, be taken to mean any time within a period of 30 days from the date of his knowledge of the particular suit or decree.

(Sd) D.H. Chandrashekaraiya.

5th) The above amendment which has been received from Mr. D. H. Chandrashekharaiya will be sent to The Prof. Br. for note and necessary action.

Smbd

14.12

14.12.36

5th This amendment is the same as the one suggested by the Member in his qualifying note to the S. C. Report.

This point was discussed in the Select Committee and was not accepted by the majority. The very object of the

Type this

amending bills will be presented by enlarging the period within which the questions of status is to be raised as proposed in the amendment of Shri. Chandrasekharan

The defendant can have the exparte decree set aside if he were not able to make his appearance for sufficient cause shown for orders

Substitute

15/12/36 (5) The amendment may be allowed as this has been considered as a Meeting of the Select Committee

1st member

15/12

17/12 MS 18/12

18/12

L. C. S.

18/12

THE
15 DEC 1936
39464

Bills to amend Agriculturists Relief Regn

General and Revenue Secretariat — Legs File No. — of 193 — [App. F. III—2

Serial No.

56) The amendment of Mr D. H. Chandrasekera's motion and the Bills as amended by them S. C was passed

57) The amending Regn. appointing Sunday to be the day on which the Court after a date to be fixed that date has now to be inserted in the Regn. before it is promulgated.

Sent with D. F. N

Sd 28/1

58) Please put up Bill for 29/1

Sd 28/1

Typed D. F. N Sent

Sd 29/1 (Secretary) (Mr Member)

29/1

60) Final Note signed by the Member is put up

30/1/37.

S. N. put up.

Dewan.)

30/1

1/2

DEWAN'S OFFICE
1 FEB. 1937
No. 295

29 JAN 1937

NOTE—Contn. Sheet.

WD 0417—GPB—30,000—8-9-36

Final Note by the First Member of Council.

Subject.—

Promulgation into law of the Bill further to amend the Mysore Agriculturists' Relief Regulation.

61 On the 27th January 1936 His Highness was graciously pleased to accord sanction to the introduction of a Bill furthe to amend the Mysore Agriculturists' Relief Regulation. The general principles of the Bill were accepted by the Representative Assembly by a majority in its Budget Session in June 1936 and the Bill was thereafter introduced into the Legislative Council in the same month. The Select Committee to which the Bill was referred made only a slight verbal alteration and the Bill as amended by the Select Committee was finally passed by the Legislative Council at its Session held on the 25th January 1937.

I solicit the gracious sanction of His Highness for the promulgation of the Bill into law.

MEMBER OF COUNCIL.

Bangalore,
30th January 1937.

Submitted to His Highness.

I submit herewith a Final Note by the First *Member of Council* regarding Promulgation into law of the Bill further to amend the Mysore Agriculturists' Relief Regulation,

for His Highness' gracious approval.

Mirza M. Ismail

Dewan.

1-2-37

24

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Promulgation into law of the Bill further to amend the Mysore Agriculturists' Relief Regulation.

C. Secy
M.O
3-2-37

MS
3/2/37

274

Order.

~~KRH~~
2/2/37

3501

25

General and Revenue
Secretariat.

321

SUBJECT :— Promulgation into Law of the Bill further to amend the Madras Agriculturists' Relief Regulation

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(*)

31. All urgent or confidential files returned with His Highness' orders may in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Headquarters and then sent to the Secretariat concerned for the issue of orders.

6/) Circulated to Members of Council for perusal of His Highness' orders before/~~after~~ issue of orders. (*Vide* Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

Chief Secretary to Government.

Through the Secretary to Government,

..... Department.

4766
3/2

FIRST MEMBER OF COUNCIL.

4/2

5604
5.2.37

SECOND MEMBER OF COUNCIL.

5/2/37

6-2

NOTE.—Contn. sheet.

WD 1170—GPB—1,000—24-12-36

P.S.no 122/36-37

Bill to amend the Agri. Relief Regn.

General and Revenue Secretariat — Legn File No. 3 of 1936. — [App. F. III—2

Serial No.

Orders are solicited on the point raised in para 5 supra re the date to be mentioned in the Regn. The amendment will apply to suits filed after such date.

5a 6/2

This date may be fixed after April 1937

This has been approved by Ist Member. See Office note

8/2

Subd. with a draft order directing the publication of the Regn. as Act of 37

5a 8/2/37

signed 8/2

1 G.O No P4906 Dt 9/2/37 directing the publication of the Regn.

Printed copies of receipts sent to party

A

NOTE—Contn. Sheet.

WD 0417—GPB—30,000—8-9-36

Uncorrected copy of R-A proofs of June 1936

Subject to Chief Secy's

GOVERNMENT BUSINESS.

BILLS.

I. General Principles of the Bill further to amend the Mysore Agriculturists' Relief Regulation.

THE CHIEF SECRETARY TO GOVERNMENT (Mr. A. V. Ramanathan), explained the general principles of the Bill as follows :—

From the special report received from the High Court on the working of the Agriculturists' Relief Regulation, it is seen that, in a large number of cases, the claim for the benefit of the Regulation was rejected, indicating that vexatious applications are often put in either to protract suits or in the hope of getting the benefit of provisions not intended for such applicants. Under the Regulation, at present, a party to a suit can raise the question of status of an agriculturist for claiming the benefit of the Regulation, at any stage of the suit. Such a provision might have been appropriate when the Regulation was first introduced and affected pending suits. In fairness to the plaintiff and to the courts it is desirable that in all future suits (instituted after a date to be fixed) the defendant should be required to state his claim for the benefit of the Regulation at the earliest possible moment.

The Agriculturists' Relief Regulation is proposed to be amended accordingly.

Mr. K. T. BHASHYAM AIYANGAR, in opposing the measure said that the raiyats in the State were not in a position to pay their dues in time and as a consequence thereof, the money lenders were proceeding against the landed properties of their debtors for the recovery of the dues. It was with the object of helping the raiyats in such a plight that the Agriculturists' Relief Regulation was brought into force. The amendment before the House was to the effect that the agriculturist-defendant should be required to raise the question of his status at the very outset. But the defendant being illiterate, often did not know that there was a law which would give him relief. He did not know even the effect of his not securing and producing receipts for the moneys which he might have actually repaid by the time a decree was passed by the court. Much less would he know the particular stage at which he should raise the question of his status. He might know it only at the stage of execution of the preliminary decree. For this reason, it would be desirable to provide that up to the stage of the final decree, the agriculturist-debtor might raise the question of his status and letting in evidence in that behalf.

It was stated that this amendment was found necessary for the speedy disposal of cases. There could be no two opinions about the need for speedy disposal, but that should not be secured by sacrificing the interest of the raiyats. Under the Agriculturists' Relief Regulation, the raiyats enjoyed a particular privilege and it would not be right to-

take away that privilege for the mere reason that a particular issue was not raised at what somebody might consider to be the earliest possible moment. After all, the time required to make enquiries as to whether the defendant was an agriculturist or not would be the same whether the claim was preferred at the commencement of the suit or at a later stage. So, it would not be correct, the speaker thought, to attribute the delay in the disposal of the cases to debtors applying for the benefit of the Regulation at a later stage. Apart from that, merely because a raiyat failed to prefer his claim at the commencement of the suit, would he cease to be a raiyat? Of course, it would be convenient if all agriculturist-debtors raised the question of status at the very commencement. In this view, instead of denying them the privilege of stating their case at a later stage, Government might leave it to the court to decide to what extent the benefit of the Regulation might be reduced by way of punishment for not raising the issue at the outset. The aim of the Regulation was to help the raiyats as much as possible and it would not be right to create handicaps for them. The amendment before the House was a retrograde measure and for that reason, he would oppose it.

Mr. T. MADIAH GOWDA said that the Regulation had not been in force for very many years and yet it had already been amended once. Even as it was, the amended Regulation was not securing for the raiyats half the relief which the raiyats in the Bombay Presidency were getting under the law in force there. As a result of the amendment before the House, even the little relief that the raiyats were till now getting would be denied to them and the law would exist only in name. Owing to the illiteracy of the raiyats, they were not in a position to know whether to receive a summons or not and the process serving staff would often record that the summons could not be served on a party owing to his absence, refusal to receive the summons, etc., and an *ex-parte* decree would be passed without giving the party a chance to state his claim. If such a thing happened, he would be doomed for ever. As the previous speaker said, it would not take a very long time to decide whether a party was an agriculturist or not. As a matter of fact, the courts were giving short adjournments for the sake of enabling parties to produce evidence to prove that they were agriculturists. Much time was not being wasted on this account. As things stood, the process staff was not always honest; the raiyats were illiterate and it would not be safe to amend the law as proposed. For these reasons, he also opposed the measure.

Mr. H. R. GURUVA REDDY, in supporting the views expressed by the previous speakers, said that as the law had been introduced only recently, there might have been some delay, as

the High Court had pointed out, in finding out whether a person was an agriculturist or not as a result of the concerned party not stating his claim at the earliest possible moment. But of late, the courts administering the law were not finding much difficulty in disposing of the cases quickly. Within the course of another two or three years, it might be hoped that cases would be disposed of still more quickly. So there was no need for the proposed amendment.

Secondly, to find out whether a person was an agriculturist or not, no elaborate enquiry was needed, and it was immaterial at what stage the question of status was raised. For this reason also, he did not think that there was any need for the amendment. If however it was considered necessary to decide the question at the outset, the courts might as well ask the defendant whether he was an agriculturist and if so to prove it, just as they would themselves raise certain questions about the genuineness of the plaintiff's claim, the willingness of the defendant to meet the same or to apply for insolvency, etc., in cases for example, of suits for recovery of debts. If such a duty was imposed on the court, then it might be laid down that an agriculturist-debtor could not raise the question of status at a later stage.

Mr. B. SRINIVASA RAO also opposed the measure for similar reasons.

Mr. M. SUBBAIYA said that almost all the raiyats were aware of the existence of the law giving them relief and such of those who were anxious to repay their debts never think of contesting the creditor's claims in law courts at all. It was only those who wanted to evade payment that did so and gained time by raising fresh issues at all possible stages. It was desirable to prevent such a state of affairs and for this reason he supported the amendment.

Mr. C. N. NARASINGA RAO started by agreeing that cases filed in small cause courts would have to be referred to munsiffs' courts to decide questions of status and the disposal of cases, no doubt, would be delayed to that extent. But he thought that the remedy proposed in the amendment would not be the best. He would much rather adopt the procedure suggested by Mr. Guruva Reddy, *viz.*, empowering the courts themselves to raise the question of status and decide whether a person was an agriculturist or not. He thought that circular instructions should be issued in this behalf to all the courts concerned. If this was done, there was no need for the proposed amendment. For this reason, he opposed the amendment.

Mr. M. A. GOPALASWAMI IYENGAR did not believe that the proposed amendment would result in great hardship to the raiyats. The question whether a party was an agriculturist or not, he said, should be decided at the earliest stage. If the party were to raise the question of status and ask for

special relief when the final decree was about to be passed, the whole process of law would have to be gone through once again, and that would mean unnecessary delay in the final disposal of the case. With a view to avoid such delays, he thought that it was necessary to insist on the party raising the question of his status at the very outset. He therefore supported the amendment.

Mr. H. K. MADIAH, in opposing the amendment, said that the raiyats could not take advantage of the existing law owing to their ignorance. Under such circumstances, insistence on the raiyats that they should raise the question of status only at a particular stage would cause a great deal of hardship to them. Besides, the law had been in force only for a few years and it was too early to think of material alterations. If at all, such amendments could be thought of some years hence.

Mr. T. MARIYAPPA said that the order extending the benefit of the Regulation to suits filed prior to January 1934 had contributed to the alleged delay in the disposal of suits and this amendment was proposed in order to avoid the delay. But if the amendment was passed, he was afraid that it would nullify one of the main objects of the Regulation; *viz.*, the continuance of the debtor's ownership of the land. The amendment of Section 14 of the Regulation which was passed in 1935 providing for the attachment of any agricultural land belonging to the judgment-debtor was itself an inroad on the privileges extended to the agriculturists and the present proposal to amend Section 4 to the effect that the question of status shall be raised at the earliest possible opportunity would worsen the position. With the ignorance of the raiyat, on the one hand, and his inability to engage the services of a lawyer on the other, this amendment would affect him very much. He knew that the courts were not allowing sufficient time to the defendants to raise all relevant issues at the preliminary stage. He did not believe that much time would be wasted by the judgment-debtor raising the question of status even at a later stage and as such, it did not matter whether it was raised at the beginning or at a subsequent stage.

So far as the creditors went, their interests were already fully secured since they could attach the property and even bring it to sale if the judgment-debtor failed to pay two successive instalments under the decree. So no special safeguards were called for from the creditors' point of view also. In the result, the amendment before the House was uncalled for, and he therefore opposed it.

Dharmapravartha M. L. NAGAPPA SETTY was of opinion that the Bill would be beneficial to the debtors themselves. For one thing it would lessen the cost of litigation by not allowing the suit to drag on. The necessity for a re-trial and of letting in evidence

once in the small cause court and again in the court of original jurisdiction would be obviated if the question of status was raised and decided in connection with the preliminary inquiry itself. By prolonging the inquiry, not only the creditor but the debtor also would be inconvenienced and ultimately the judgment-debtor might come to be dispossessed of his land; because, the creditors would, in the event of non-payment, insist on unqualified sale of the mortgaged properties instead of being satisfied with merely obtaining renewals of the mortgage deeds. Government had the duty of safe-guarding not only the interests of the agriculturists but also those of the creditors. Otherwise for every creditor ruined so, many debtors depending upon his help would suffer. There were complaints everywhere against laws delays. But if needful steps were proposed for avoiding delays, necessary support would not be forthcoming. The speaker could not understand this inconsistency on the part of responsible members of the Assembly. Personally he felt that the House should accept the proposed amendment.

In opposing the Bill, Mr. BELUR ŚRIŃIVAŚIENGAR said that according to the provisions of the Civil Procedure Code, evidence might be let in not only at the preliminary stage but at subsequent stages also, so that the proposed amendment would be inconsistent with the spirit of the other Regulation. Supposing that there was an *ex-parte* decree against an agriculturist and that he put in an application for re-trial on the ground that summons had not been served on him, the speaker asked whether the judgment-debtor could or could not plead, at that stage, that he was an agriculturist and whether it would be right, in such cases, to leave the interpretation of the term "at the earliest possible opportunity" in the hands of a subordinate judicial officer. With regard to the privileges bestowed by the legislature by means of a substantive law on an entire class of people, the speaker was of opinion that subordinate judicial officers ought not to deny to those people the benefit of those privileges. Such denial was nowhere to be heard of.

Secondly, having created a privilege in favor of a party, asked the member, how could he be denied that privilege simply because of some delay on his part in claiming it? Any provision in favor of such denial would be opposed to all canons of justice.

The interpretation of the term "at the earliest possible opportunity" was sure to give rise to much controversy since it was not defined in the Bill itself. He would not subscribe to the view that the delay in the disposal of money suits was due to delay on the part of agriculturist-debtors in raising the question of status in proper time. There would have been some justification for the amendment if at least the creditors themselves had held meetings

and passed resolutions or made representations to the Government that suits were delayed on account of the want of a provision like the one before the House.

Mr. M. L. NAGAPPA SETTY replied that representations to that effect had been made.

Mr. BELUR SRINIVASIENGAR, however, was not prepared to believe that it was so. He said that he was not in a position to understand the full implications of the measure since the members had not been furnished with copies of the proposed amendment.

THE FIRST MEMBER (Rajamantrapravina S. P. Rajagopolachari) said that the amended provision was very brief and would read as follows :—

"New Section (I—A)—Notwithstanding anything to the contrary contained in this Regulation, the question as to the status of a party as an agriculturist, in suits filed after .... shall be raised at the earliest possible opportunity."

He also pointed out that even in the Civil Procedure Code the term "at the earliest possible opportunity" had been used under several sections though it had not been defined anywhere, so that that expression was very well understood by one and all. Such being the case, he did not see how any difficulty would arise in the interpretation of that term when employed in another Regulation. The object of the amendment was quite simple—that the question of status should be raised at the first possible opportunity. A similar provision was found in the Civil Procedure Code, as for instance in respect of jurisdiction. The speaker further explained that provision on the lines of the amendment under discussion should have been included in the original Bill itself; but at that time, it was felt that the position was clear enough and that it was not necessary to make a specific provision. But subsequently it was found from experience that that point should be incorporated in the Regulation specifically and so it was that the High Court had recommended this amendment. He further added that if members thought that the wording of the amendment should be examined in detail, Government would be quite prepared to accept the suggestion.

Mr. BELUR SRINIVASIENGAR however, thought that in the Civil Procedure Code, the provision containing the words "at the earliest possible opportunity" related only to the question of filing documents to be relied on in the case and had nothing to do with the question of status. In conclusion, he observed that nothing should be done to whittle down the privileges extended for very good reasons to the hard-hit agriculturists in the State, and he therefore prayed that the amendment be taken back.

At this stage, the Assembly rose for lunch and met again at 3-35 p.m.

Mr. C. CHELUVAIYA pointed out that under the existing law there was every scope for the agriculturist to represent at the early stage of a suit that he, as an agriculturist, must be given the benefit of the Agriculturists' Relief Regulation. But the difficulty was that in small cause cases, the defendants raised the question of status at later stages and thus delayed the proceedings. Very often, the applications made in this respect were vexatious or frivolous. It was to avoid such petitions and to avoid delays that the High Court had recommended the amendment. He was sure that the amendment, if passed, would not adversely affect judgment-debtors or decree-holders. He could not understand how anybody could characterise the amendment as a means of whittling down anybody's rights or privileges. Nor could he understand why a defendant, if he was really an agriculturist, should not raise the question of his status at the very first opportunity.

Referrring to cases wherein decrees were alleged to be obtained fraudulently without serving summonses, etc., there was provision in the law for the judgment-debtors to put in petitions and get the decrees set aside. This was no reason why defendants should be permitted to raise the question of status at any stage they pleased. If they succeeded in getting the decrees set aside, they would then put in written statements and take opportunity in that connection to raise the question of status. That naturally would be accepted by the courts as the earliest possible opportunity.

In the absence of the proposed amendment, the speaker said, the disposal of small cause cases would be needlessly delayed. This, the member thought, should not be allowed any longer and he therefore supported the amendment. He was not prepared to believe the contention that agriculturists were still ignorant of the provisions of the Agriculturists' Relief Regulation which was passed so long ago as 1928 and which was of such vital interest to themselves.

Mr. B. L. BYANNA thought that those who opposed the Bill seemed to be viewing the question only from the debtors' point of view with little regard for the interests of the creditors. He did not know why they were so hard on the creditors. But he was glad that the Government, in proposing the amendment in question had rightly shown the same sympathy for both creditors and debtors.

In the case of *ex-parte* decrees obtained fraudulently, he explained that the Regulation provided ample scope to the aggrieved party to get the decree set aside and then contest as if the case were fresh. He was not prepared to give credence to the plea of ignorance advanced on behalf of the raiyats as most of them were sure to engage lawyers to defend them.

Proceeding, he said that the amendment was necessaryin the interests of the agriculturists themselves. On account of the Agriculturists' Relief Regulation agriculturists were not able to raiseloans as freely as they were doing formerly, because creditors were not sure of timely repayment. If the amendment was passed, creditors would get fresh hopes and the borrowers were sure to benefit thereby.

For all these reasons, he commended the proposed amendment to the House.

Mr. MIR MAHOMED SAHIB opposed the Bill on the ground that it aimed at curtailing the privileges specially vouchsafed to the raiyats by His Highness the Maharaja. As matters stood, the money-lenders were obtaining *ex-parte* decrees in most cases because, the raiyats could not engage lawyers to contest the suits. Such being the case, he said that every possible latitude should be shown to the agriculturists so that decree-holders might not proceed against the immovable properties of the judgement-debtors and ruin them.

Mr. B. S. PUTTASWAMY pointed out that the amending Bill would not take away the privileges which the Agriculturists' Relief Regulation bestowed on the raiyats. No doubt, at present the agriculturist-debtors could, at any stage of the suit, raise the question of status. But he did not believe that any serious inconvenience would be caused by laying down that such a claim should be preferred at the earliest possible opportunity. Otherwise he would ask who would be responsible for the extra cost involved so far as the creditor was concerned, in a *de novo* trial. At the same time, he was aware of instances where *ex-parte* decrees were obtained even though summonses were not served on the defendant at all. In such cases particularly, he would suggest a provision to the effect that the question of status might be raised at the stage of execution of the preliminary decree.

Mr. K. SREEKANTIAH pointed out that after the passing of the Agriculturists' Relief Regulation, the money-lenders had ceased lending moneys to agriculturists. These latter could be saved from their plight only by creating confidence on the part of the money-lenders that their money was safe. Such a thing would be done by the amendment before the House. By insisting upon the defendant to raise the question of status at the earliest stage, the case would be disposed of early. If this was not done, the defendants might take undue advantage of the position and delay the matter indefinitely, and cause needless worry and loss to the creditor. The amendment would obviate such a state of affairs and the speaker therefore supported the Bill.

Mr. M. S. PUTTARAMA SETTY differed from the view that the amendment would go to improve the creditworthiness of the agriculturist. Even

if that was so, he would, for that very reason, oppose the amendment. For, he said, agriculturists were raising loans far beyond their repaying capacity and it was time, in his opinion, that they were prevented from doing so. Secondly, under the existing Regulation there was scope for the judgment-debtor to get the decree set aside by raising the question of status even subsequent to the decree but that privilege would be denied to him under the Bill. Members of the Assembly ought not to allow such things and should therefore oppose the amendment. Thirdly, the time was not propitious for stiffening any law affecting agriculturists. For all these reasons, he requested the Government to withdraw the Bill.

Mr. TUDKI RAMANNA GOWDA opposed the amendment on the ground that even at present agriculturists had lots of difficulty in raising loans and that if fresh restrictions were imposed, their difficulties would be further aggravated.

Mr. L. VEMA REDDY did not agree that subordinate judicial officers could not, in their discretion, take away rights given by a substantive law. Besides, there was no question in connection with the amendment before the House of any right being taken away, as it merely sought to specify the particular stage at which a certain claim should be preferred. He did not see any difficulty in the way of the debtor raising the question of status at the time of filing his written statement or objection petitions. For this reason, he supported the amendment. But so far as *ex parte* decrees went he thought it would be reasonable to allow a judgment-debtor to raise the question of status at the time of execution of the preliminary decree.

Mr. S. P. RAJAGOPALACHARI, replying on behalf of the Government, observed that he had only to repeat what had been said already by him. There appeared to be an apprehension among the members opposing that the amendment would create difficulties for the raiyats and frustrate the very object of the Regulation, namely, affording relief to the agriculturists. But there was no reason for such an apprehension. In fact, other members who had supported the measure had themselves explained how it would not affect the raiyats adversely. Positively, there were three reasons why the measure should be accepted. First, according to Section 21 of the Civil Procedure Code, the question of jurisdiction would have to be settled in the beginning itself by all civil courts. On the same analogy, the question of status also could well be raised at the earliest possible opportunity as a preliminary issue. It was only after this that necessary evidence would have to be let in and the case proceeded with on merits. This was the idea of the Government even when they drafted the Regulation. They never thought

that the wording of Section 2 (c) gave scope for the interpretation that the question of status could be raised at any stage of the suit. But because in actual practice the question was being raised at all stages, it was considered expedient to prevent it in future and avoid delays. This was why the High Court had recommended to the Government that the amendment proposed was necessary.

Secondly, the Civil Procedure Code was common to all civil disputes, including cases falling under the Agriculturists' Relief Regulation. Under that Regulation, the written statement to be filed by a defendant should be filed at the earliest possible stage and contain the defendant's case in full If that were so, he did not know how the particular issue regarding statu could be raised at a later stage. H hoped that nobody would urge tha cases falling under the Agriculturists Relief Regulation should alone b made an exception to the Civil Procedure Code. No doubt written statements once filed were not to be considered as unalterable documents. They could be amended subsequently. But this, again, would be permitted only with reference to circumstances arising subsequent to the filing of the written statements. Status could not be characterised as a circumstance arising subsequent to the filing of a written statement, and therefore the question of status was one which must be decided at the first hearing itself. In exceptional circumstances the court might allow the question of status to be raised subsequently; but ordinarily it should not be permitted as a matter of course, to be raised at any stage of a suit.

Thirdly, as regards the objection advanced by Mr. Belur Srinivasiengar to the measure that the term "at the earliest possible opportunity" had not been defined in the Regulation and so the exact stage at which the question of status could be raised was not clear, his only reply was that the meaning of the term was so well known and understood that it had been employed in most Regulations without being specially defined anywhere, such as for instance, in Section 21 of the Civil Procedure Code, Order II, Rule 7, etc. The Civil Procedure Code was in existence for several decades past and nobody had felt the need for a clear definition of the term "at the earliest possible opportunity." Whatever meaning had been attached to that term by all lawyers, courts and the public, might well be attached to it in future also.

Mr. Puttaswamy had raised a point that the amendment proposed would create new difficulties if *ex parte* decrees were executed without giving opportunity for the judgment-debtors to raise the question of status. There did not seem to be any grounds for even this apprehension. Even under the existing provisions, the question of status could not be raised or re-opened after the final decree was passed.

Mr. B. S. PUTTASWAMY, in explaining his point, observed that if an *ex parte* decree was passed and execution proceedings instituted, the defendant could, according to the existing provisions of the Regulation, raise the question of status and get the decree set aside. That privilege was sought to be taken away by the proposed amendment even in the case of execution of *ex parte* decrees. He wanted that only in such cases, as exceptions, opportunity should be afforded for the judgment-debtors to raise the question of status at the stage of execution of the preliminary decrees.

Mr. S. P. RAJAGOPALACHARI pointed out that it was not always that *ex parte* decrees were passed and were executed. And even if such decrees were passed, the defendant would naturally file an application that summonses had not been served on him, etc., and get the decree set aside on that score alone. So there was no need to make an exception with regard to the stage at which the question of status could be raised. However, the main difficulty at present was that the section was so broadly worded that there was considerable delay in the disposal of cases and so it was necessary to amend the Regulation. Quick disposal would mean less expense to the litigant public while they would suffer much by cases being dragged on. For all these reasons he hoped that the House would accept the measure.

The general principles were thereupon put to vote and carried, 86 voting for and 61 against.

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R.O.C. No. 153
Dis. 35-36

Eg. Gaz. Mysore (P.P. 1935)

HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,

Bangalore,.....14th November.....*193* 5.

Ab 102-35-1

FROM

A. Sundararaja Rao, Esq., B.A., B.L.,
~~S. Venkata Ranga Iyengar, Esq., B.A., LL.M.,~~
Registrar, High Court of Mysore.

Pandu 15/11

To

A.V.Ramanathan, Esq., B.A.,,
Chief Secretary to the Government of Mysore,
B A N G A L O R E.

SIR,

With reference to your letter No. P.4232/Cts. 163-33-3, dated 9th March 1934, requesting that a Special Report may be sent on the working of the Agriculturists' Relief Regulation in the State in 1934, as the provisions of the Regulation had been extended throughout the State, I am directed to report that in 1934 according to statistics collected from the several Courts in the State in 5338 cases the benefit of the Regulation was claimed by Defendants and in 2282 of them the claim was allowed, while it was rejected in 646 cases in the Bangalore and Shimoga Divisions. The number of cases in which the claim was rejected has not been reported for the Mysore Division. Figures relating to each of the Courts in the State are shown in the statement appended. I am to point out that the surprisingly large number of claims rejected appears to indicate that many unscrupulous defendants put in vexatious applications, either to protract suits against them or in hope of getting the benefit of provisions not intended for them. The extension of the Regulation throughout the State appears to have been to a considerable extent the cause of the fall in the number of suits instituted and the decline in Court-fees. I am also to point out that, if the number of suits has been reduced in that way, the Regulation has in some ways added a great deal to the work of the Courts. In over 3000 cases the Courts had to decide the preliminary question whether

whether the defendant was an "agriculturist" within the meaning of the Regulation, which may well occupy a good deal of time, apart from the pending applications, in respect of many of which part of the work must have been done. Moreover a very large number of suits, which otherwise would have been tried as small causes, have had to be tried, as required by the Regulation, as ordinary suits.

2. When a suit is instituted in a Small Cause Court and the defendant claims the benefit of the Regulation, the High Court has reason to believe that there has been some doubt whether the Small Cause Court should decide the preliminary issue so raised or the suit should be transferred at once for trial as an ordinary suit. In the opinion of the High Court it is appropriate that the Small Cause Court should decide that issue and that the transfer should take place only after that issue has been decided for the defendant. I am therefore to recommend to Government that that be made clear by amendment.

3. It also appears to the High Court desirable that it should be made clear by amendment that in all future suits (instituted after a date to be fixed) any defendant, who wishes to claim the benefit of the Regulation, must do so at the first hearing. Explanation (c) to Section 2 may have been appropriate when the Regulation was first introduced and affected pending suits. But in fairness both to Plaintiffs and to the Courts defendants in future suits may properly

be required to state their claims to come under the Regulation at the earliest possible moment.

I have the honour to be,

Sir,

Your most obedient servant,

REGISTRAR.

KSR/3.

APPENDIX.

Name of Court.	The number of cases in which the benefit of the Regulation was claimed by defendants.	The number of cases in which the claim was allowed.	The number in which it was rejected.
1	2	3	4
BANGALORE DIVISION.			
Subordinate Judge's Court, Bangalore	32	3	12
Small Cause Court, Bangalore	114	103	11
First Munsiff's Court, Bangalore	5	1	-
Second Munsiff's Court, Bangalore	200	75	3
Munsiff's Court, Closepet	114	89	-
" Dodballapur	68	33	14
" Kolar	453	80	185
" Kolar Gold Fields	144	84	14
" Chikballapur	241	88	30
First Munsiff's Court, Tumkur	111	26	17
Second Munsiff's Court, Tumkur	195	82	13
Munsiff's Court, Madhugiri	78	23	13
T o t a l	1755	687	312
MYSORE DIVISION.			
District Judge's Court, Mysore	1	-	-
Subordinate Judge's Court, Mysore	32	6	-

Figures not furnished.

Name of Court	The number of cases in which the benefit of the Regulation was claimed by defendants.	The number of cases in - which the claim was allowed.	The number in which it was rejected.
Additional Subordinate Judge's Court, Mysore	1	-	-
First Munsiff's Court, Mysore	129	15	-
Second Munsiff's Court, Mysore	121	43	-
Munsiff's Court, Seringapatam	202	198	-
Munsiff's Court, Nanjangud	237	50	-
Munsiff's Court, Holenarsipur	60	33	-
" Hassan	496	352	-
" Hunsur	316	143	-
" Mandya	109	64	-
Total	1704	904	-
SHIMOGA DIVISION.			
District Judge's Court, Shimoga	7	-	1
Subordinate - Judge's Court, Shimoga	251	93	88
Munsiff's Court, Shimoga	215	32	24
Additional Munsiff's Court, Shimoga	43	18	13
Munsiff's Court, Sagar	258	38	11

figures not furnished.

Munsiff's Court,	Chital-drug	252	96	9
"	Davangere	352	189	62
"	Chikmaga-lur	386	196	101
"	Narasimha-rajapura	115	29	25
	Total	1879	691	334
GRAND	TOTAL	5338	2282	646

HIGH COURT OF MYSORE,

BANGALORE.

DATED: 14th Novr. 1935

REGISTRAR.

KSR/3

3161 p 635

R. O. C. No. 670 / 35-36 — Ex. Judgments (P.P. 12617)

HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,
Bangalore, 28th November 1935

FROM A. Sundararaja Rao, Esq., B.A., B.L.,
~~S. Venkata Ranga Iyengar, Esq., B.A., LL.M.,~~
Registrar, High Court of Mysore.

To

Chief Secretary Park
28 NOV. 1935

A. V. Ramanathan, Esq., B.A.,
Chief Secretary to the Government
of Mysore, BANGALORE.

SIR,

2582 / 0 635

With reference to paragraph 2 of my letter No.D1. Dis.150/35-36, dated 14th November 1935, regarding the working of the Agriculturists' Relief Regulation in the State ~~for~~ in the year 1934, I am directed to forward for the information of the Government, copies of the judgments in Civil Referred Case No.1 of 1935-36 on the file of the High Court. It will be seen that on a reference from the District Judge of Mysore it has now been judicially decided that, as the Regulation now stands, when a defendant in a suit in a Court of Small Causes claims to be an agriculturist within the meaning of the Regulation and that is disputed the question must be decided in the Court of Small Causes. The amendment suggested in my letter is therefore now unnecessary.

I have the honour to be,
Sir,
Your most obedient servant,

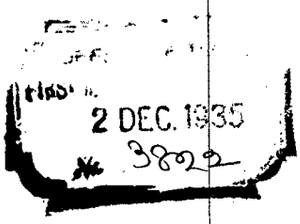
Registrar.

The previous reference is before the 1st member, Chief Judge. Therein the High Court had suggested some amendments. On review of the High Court's decision amendment in regard to the decision of the preliminary issue by S.C. Court whether it may be raised is not necessary. GS. Sealed. in envelope.

CHIEF SECRETARY

Chief Secretary 29/11/35

Serial No.



WD 03594—GPB—30,000—13-7-35

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Tuesday, the 19th day of November 1935.

PRESENT

MR. H. D. C. REILLY, CHIEF JUSTICE,

and

MR. JUSTICE K. SHANKARANARAYANA RAO.

CIVIL REFERRED CASE NO. 1/1935-36.

In the matter of a reference under Rule 7 of Order 46 of the Code of Civil Procedure made by the District Judge of Mysore, at the instance of the Additional Subordinate Judge of Mysore (and received with the District Judge's letter No. 2079/271, dated 23/24-10-1935), on the question whether or not a Court of Small Causes has jurisdiction to decide the plea of a defendant claiming to be an 'agriculturist' within the meaning of the Agriculturists' Relief Regulation.

HEARD :- Mr. A.R. Nageswara Iyer, Government Advocate for Government.

JUDGMENT.

J U D G M E N T.

THE CHIEF JUSTICE.

This is a matter which has been referred to this Court by the District Judge of Mysore under Rule 7 of Order XLVI of the Code of Civil Procedure.

Three suits were instituted in the Court of the Additional Subordinate Judge of Mysore in his capacity as a Judge of a Court of Small Causes. In each of those suits the Defendant raised the plea that he was an "agriculturist" within the meaning of the Agriculturists' Relief Regulation. The learned Subordinate Judge instead of considering that plea, which was disputed by the Plaintiff in each case, and reaching a finding on the issue whether the Defendant in each case was an agriculturist in that sense came to the conclusion that in each case, as soon as that plea was raised, his jurisdiction as a Judge of a Court of Small Causes was excluded and the suits should be transferred to be tried as ordinary suits in another Court. The learned District Judge differing from the view of the Subordinate Judge, has referred the matter to this Court, as in his opinion the Subordinate Judge has failed to exercise

his

his jurisdiction in the suits as a Judge of a Court of Small Causes.

Under Section 4 of the Small Cause Courts Regulation suits of certain kinds, not exceeding certain amounts in value, are cognizable by Courts of Small Causes. And under Section 6 save as expressly provided by that Regulation or by any other enactment for the time being in force such suits shall not be tried by any other Court than a Court of Small Causes. That for our present purpose is the general rule to be applied Apart from the pleas in these suits that the Defendants were "agriculturists" within the meaning of the Agriculturists' Relief Regulation there is no suggestion that the suits were other than suits cognizable only by a Court of Small Causes within the area from which they arose. But the Agriculturists' Relief Regulation has provided that suits of certain kinds, including some of those kinds of suits to which the Small Cause Courts Regulation applies, shall be tried under the Agriculturists' Relief Regulation and subject to the special procedure provided in that Regulation and to the special powers given to Courts trying suits under that Regulation, if the defendant or any of the defendants in such a suit is an "agriculturist" within the

meaning of the Regulation. Section 2 of the Agriculturists' Relief Regulation defines an "agriculturist" for the purpose of that Regulation. Section 3 provides that suits to which the Regulation applies shall be tried under the procedure prescribed by that Regulation. Section 4 provides that, if any question is raised as to the status of a party as an "agriculturist", i.e. whether for that reason the suit is one to which the Regulation applies the Court shall try that question as a preliminary issue and record its finding thereon. Section 23 provides that every suit under the Regulation shall be tried as "an original suit" The expression "original suit" does not appear to have been defined in any enactment and is in itself not very clear. In its original trial in the Court of first instance, to which the Plaintiff applies for relief, any suit, whether of a small cause nature or otherwise, might be properly described as an "original suit" in contra-distinction from an "appeal suit". But very often, as we all know, the expression "original suit" is used to mean, perhaps not very accurately, a suit which is, not a small cause suit, but an ordinary suit to be tried by the ordinary procedure provided by the Code of Civil Procedure. And I think there can be no doubt that in Section 23 of

the

the Agriculturists' Relief Regulation the words "original suit" are used to indicate an ordinary suit, i.e. a suit other than a small cause suit to be tried by a Court of Small Causes. Section 26 of the Agriculturists' Relief Regulation provides that, if the Court in which any suit to which the Regulation applies is pending is not competent under the Regulation to try it it shall be transferred to and tried by the Court competent to try it under the Regulation Those are the provisions which have to be considered in connection with the question before us.

It will be seen that we have a general provision in the earlier enactment, the Small Cause Courts Regulation, that suits of certain kinds shall be tried by Courts of Small Causes and only by Courts of Small Causes. Then we have a later enactment, the Agriculturists' Relief Regulation, which in some respects make an exception to the provisions of the earlier enactment, the exception being in effect that, if the defendant in a suit, which would otherwise have to be tried by a Court of Small Caus is an "agriculturist" within the meaning of th Agriculturists' Relief Regulation and the suit is one to which that Regulation applies, then the

the suit must be tried as an ordinary suit or an "original suit", as it is described in Section 23 of the Agriculturists' Relief Regulation, not in a Court of Small Causes, but in an ordinary Court of original civil jurisdiction. That exception to the general rule must be interpreted strictly, as all exceptions to general rules have to be interpreted. It will be seen that under Section 3 of the Agriculturists' Relief Regulation the exception applies if the defendant or one of the defendants is an "agriculturist" as defined in the Regulation. But the learned Subordinate Judge interprets the exception as if it applied, not only when the defendant is an "agriculturist" in that sense, but also when he claims to be an "agriculturist". In his view the moment the defendant claims to be an "agriculturist" in that sense in any suit instituted in a Court of Small Causes, which is otherwise of a kind described in Section 3 of the Agriculturists' Relief Regulation, the Court of Small Causes loses its jurisdiction, and the question whether the Agriculturists' Relief Regulation applies to the suit or not must be tried not in the Court of Small Causes, but in an ordinary Court of original civil jurisdiction. That appears to me to be in effect extending the exception made by the

Legislature to the general rule in regard to suits which have to be tried by Courts of Small Causes and a quite unjustifiable extension of the exception. The learned Subordinate Judge does not go so far as to say that, as soon as the defendant claims to be an "agriculturist", the suit becomes one which has to be tried under the Agriculturists' Relief Regulation with its special procedure and special powers. But he does say, and he has found in these suits with which we are concerned, that, as soon as the defendant claims to be an "agriculturist" in that sense, the question whether he is an "agriculturist" in that sense, if disputed, must be tried as a preliminary issue in a Court of ordinary civil ~~m~~ jurisdiction. Section 4 of the Agriculturists' Relief Regulation - provides that, when such a question is raised by a defendant claiming to be an "agriculturist" in that sense and his claim is disputed, that question must be tried as a preliminary issue. Section 4(1) provides that "the Court" shall try that question as a preliminary issue. What Court can be intended by those words? In my opinion the Court intended is clearly the Court in which the claim is raised. If in a suit instituted in a Court of Small Causes the defendant raises a plea that the suit is not one within the jurisdiction of a Court of Small

Causes, the suit does not at once fall out of the jurisdiction of the Court of Small Causes, but the Judge of that Court has to decide the question whether he has jurisdiction to try the suit or not. That is the general rule when the jurisdiction of a Court is disputed. Is there any reason to suppose that, when the jurisdiction of a Court of Small Causes is disputed by the defendant claiming to be an "agriculturist" within the meaning of the Agriculturists' Relief Regulation, the judge of the Court of Small Causes is relieved of the duty of deciding whether he has jurisdiction or not? I can see nothing in the language of Section 4(1) of the Agriculturists' Relief Regulation to suggest that. The plain meaning of that sub-section I think is that the Court in which the plea is raised must decide whether the plea is a good one or not.

The learned Subordinate Judge has thought that some words used in Sub-section (2) of Section 4 of the Agriculturists' Relief Regulation throw light upon this matter and indicate that it is not the Judge of the Court of Small Causes who should decide that preliminary issue, if raised before him. The words to which he has referred are: "Notwithstanding anything to the contrary contained in this

Regulation or in the Code of Civil Procedure, 1911, the finding of the Court of first instance on the issue of status shall be final". He refers specially to the words "the Court of first instance", which is there mentioned as making a finding on the issue of status, i.e. on the issue whether the defendant is an "agriculturist" within the meaning of the Agriculturists' Relief Regulation or not. His view is that a Court of Small Causes is not a "Court of first instance" because there is no appeal from such a Court. That does not seem to me to be a reasonable view. A "Court of first instance", as I understand it, means a Court of original jurisdiction, to which a plaintiff goes for relief or is entitled to go for relief. Against the decisions of some of such Courts the law may provide a right of appeal; but such a Court does not cease to be a "Court of first instance" merely because the law does not give a right of appeal against its decisions. I think there is no force in that argument, which has influenced the learned Subordinate Judge. In my opinion on a plain reading of the provisions of the Agriculturists' Relief Regulation there can be no doubt that, if a suit of a small cause nature under the provisions of the Small Cause

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Courts Regulation is properly instituted in a Court of Small Causes, and the defendant raises a plea that the suit is one of those to which the Agriculturists' Relief Regulation applies because he is an "agriculturist" within the meaning of that Regulation and therefore the Small Cause Court's jurisdiction is excluded, and the plaintiff disputes that, that issue must be decided by the Court in which it is raised, i.e. the Court of Small Causes, in which the suit has been filed. That appears to me to be the plain meaning of the provisions of the Agriculturists' Relief Regulation, when they are examined.

The learned District Judge in making this reference has drawn attention to the inconvenience which might result from any other interpretation. Where two interpretations of an enactment are possible on its own wording -- and I do not think two interpretations are really possible in this case -- it is often ~~useful~~ useful to examine the two interpretations and their effects in order to see whether either of them leads to obviously inconvenient or unjust results. If we were to adopt that method in the present case, we should find certain obvious inconveniences in the interpretation which the learned Subordinate Judge has

has adopted. If a suit like these suits was instituted in a Court of Small Causes and the defendant set up the plea that he was an "agriculturist" within the meaning of the Agriculturists' Relief Regulation, which was disputed, and instead of the Judge of the Court of Small Causes deciding that question the suit was at once transferred to a Court of ordinary civil jurisdiction, and that Court of ordinary civil jurisdiction then found that the defendant was not an "agriculturist" within the meaning of the Regulation, the suit would be one to which the Agriculturists' Relief Regulation did not apply and which under the provisions of the Small Cause Courts Regulation was cognizable only by a Court of Small Causes, and therefore it would have to come back again to the Court of Small Causes, and time and money would have been wasted to no purpose, whereas that could have been avoided if the Judge of the Court of Small Causes had himself decided the question raised by the defendant on the plea that he was an "agriculturist". Is it at all likely that the Legislature intended to leave room for such obvious and unnecessary inconvenience and waste of time and money? Moreover, as the learned District Judge has pointed out, if in such a suit instituted in a Court of Small

Causes